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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
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12 BETTER FOOD CHOICES, LLC,

13 Plaintiff,

14 v.

15 AMAZON.COM, INC., APPLE, INC. and
16 GOOGLE, INC.,

17 Defendant.

Civil Action No. 3:15-cv-00198-WHA

**STIPULATED REQUEST FOR ORDER
STAYING CASE PENDING RESOLUTION
OF PETITION FOR COVERED BUSINESS
METHOD REVIEW BY USPTO**

18 Plaintiff Better Food Choices, LLC (“Plaintiff”) and Defendants Amazon.com, Inc.
19 (“Amazon”), Apple Inc. (“Apple”), and Google Inc. (“Google,” collectively “Defendants,” and
20 together with Plaintiff, “the Parties”) hereby jointly request an order staying this case pending
21 resolution by the U.S. Patent and Trademark Office of the Petition for Covered Business Method
22 Review of U.S. Patent No. 5,841,115 (the “’115 patent”) filed by Google, which asks the Patent
23 Office to decide all claims of the sole patent-in-suit are unpatentable and invalid.

24 In support of their stipulated request, the Parties state as follows:

25 1. On February 4, 2015, Google filed a Petition requesting that the Patent Trial and
26 Appeal Board (“PTAB”) review the patentability of the ’115 patent under the Transitional
27 Program for Covered Business Method Patents (CBM) established by Section 18 of the Leahy-
28 Smith America Invents Act (“AIA”).

2. Section 18(b)(1) of the AIA provides:

If a party seeks a stay of a civil action alleging infringement of a patent under Section 281 of title 35, United States Code, relating to a transitional proceeding for that patent, the court shall decide whether to enter a stay based on—

- (A) whether a stay, or the denial thereof, will simplify the issues in question and streamline the trial;
- (B) whether discovery is complete and whether a trial date has been set;
- (C) whether a stay, or the denial thereof, would unduly prejudice the nonmoving party or present a clear tactical advantage for the moving party; and
- (D) whether a stay, or the denial thereof, will reduce the burden of litigation on the parties and on the court.

3. Under this and other CBM provisions in the AIA, the PTAB has authority to invalidate claims in a patent, including because they are unpatentable subject matter under 35 U.S.C. § 101 and/or invalid under § 112.

4. Google's CBM Petition challenges the validity of all claims of the '115 patent, which is the only patent at issue in this action. Accordingly, the CBMR Petition has the potential to resolve this case in its entirety.

5. Although Amazon, Apple, and Plaintiff did not participate in the process of drafting or approving the CBM Petition or contribute to its funding, any decision that the '115 patent is invalid in its entirety would simplify, if not eliminate, all issues in question, and reduce the burden of litigation on the Parties and on the Court.

6. This case is still at the pleading stage; discovery has not begun; and no trial date has been set.

7. The requested stay would not prejudice any Party or present a tactical advantage to any Party, in part because the patent is expired and no injunction is available. The Parties thus agree to file this stipulated request.

8. The Parties believe that a stay of this action pursuant to Section 18(b)(1) of the AIA is desirable and appropriate.

Accordingly, the Parties hereby request a stay of this action until the Parties notify the Court within fifteen days after the date that the CBMR Petition reaches a final disposition. The

Parties agree that the date of a final disposition will be (a) the day on which the PTAB issues a decision that disposes of the CBMR Petition, (b) the day on which any applicable period for appeal from such a decision expires, or (c) the day on which final judgment issues in any appeal taken from such a decision, whichever occurs later.

DATED: February 13, 2015

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**[PROPOSED] ORDER STAYING CASE
PENDING RESOLUTION OF PETITION
FOR COVERED BUSINESS METHOD**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated:

District Judge William Alsup